

To: Connecticut State Contractors and Prospective State Contractors

From: Jeffrey B. Garfield, Executive Director and General Counsel

Re: Prohibition on Campaign Contributions to Candidates, PACs and Political parties

Date: June 5, 2006

General Background

As you may be aware, the Connecticut General Assembly recently enacted the most sweeping campaign reform legislation in the U.S. This legislation is contained in Public Act 05-05 of the October 25, 2005 Special Session, and was amended in Public Act 06-137. **Effective on and after December 31, 2006 the Act prohibits “principals” of state contractors and prospective state contractors from donating and soliciting certain campaign contributions.** See Section 9-333n (g) of the General Statutes. (2006 Supplement to the General Statutes). This memorandum is intended to provide an explanation of this prohibition, as well as the reporting requirements for state contractors and those seeking to do business with the state (“prospective state contractors”). For further information, please contact the State Elections Enforcement Commission.

The Prohibition

A. State Contractors doing or seeking to do business with the Executive Branch of State Government

The prohibition on campaign contributions applies both to “principals” of state contractors and prospective state contractors that have met certain financial thresholds. For definition of terms, please see *Definitions*.

The “principals” of a state contractor that has a state contract with any single state agency or quasi public agency within the Executive branch of state government that has a value of \$50,000 or more in a fiscal year, or a combination or series of state contracts with multiple state agencies that have an aggregate value of \$100,000 or more in a fiscal year, are prohibited from making or soliciting campaign contributions, to, or on behalf of, any of the candidates or committees enumerated in this section:

The “principals” of a prospective state contractor that has submitted a bid or proposal in response to an invitation or RFP by any single state agency or quasi public agency within the Executive branch of state government, and which bid or proposal is valued at \$50,000 or more, or a combination of bids or proposals in response to invitations by multiple state agencies that, in the aggregate are valued at \$100,000 or more, are also prohibited from making or soliciting campaign contributions to, or on behalf of, any of the candidates or

committees mentioned below. See Section 9-333n (g) (2) (A), Connecticut General Statutes.

“Principals” cannot make contributions to, nor solicit for, the following candidates and committees:

1. an exploratory committee or candidate committee for the offices of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer;
2. a political committee authorized to make contributions or expenditures to, or for any of the candidates for the offices mentioned above;
3. a party committee.

The prohibition on contributions by state contractors is no longer in effect upon termination of the contract, or series of contracts.

The prohibition on contributions by prospective state contractors is no longer in effect when it is clear that they have not won the bid and that the contract in question has been awarded to someone else.

B. State Contractors doing or seeking to do business with the Legislative Branch of State Government

The application of the prohibition on contributions by a state contractor to the Legislative Branch (General Assembly) is dependent upon whether the contractor does business with or is seeking to do business with an agency or agencies in the Legislative branch of State Government.

The “principals” of a state contractor that has a state contract with any single state agency within the Legislative branch of state government that has a value of \$50,000 or more in a fiscal year, or a combination or series of state contracts with multiple legislative agencies that have an aggregate value of \$100,000 or more in a fiscal year, are prohibited from making or soliciting campaign contributions, to, or on behalf of, any of the candidates or committees listed below.

The “principals” of a prospective state contractor that has submitted a bid or proposal in response to an invitation or RFP by any single state agency within the Legislative branch of state government, and which bid or proposal is valued at \$50,000 or more, or a combination or bids or proposals in response to invitations by multiple legislative agencies that, in the aggregate are valued at \$100,000 or more, are also prohibited from making or soliciting campaign contributions to, or on behalf of, any of the candidates or committees mentioned below. See Section 9-333n (g) (2) (B), Connecticut General Statutes.

Such principals cannot make contributions to, or solicit for, the following candidates and committees:

1. an exploratory committee or candidate committee for the offices of State Senator or State Representative;
2. a political committee authorized to make contributions or expenditures to, or for any candidate for the General Assembly;
3. a party committee.

The prohibition on contributions by state contractors is no longer in effect upon termination of the contract, or series of contracts.

The prohibition on contributions by prospective state contractors is no longer in effect when it is clear that they have not won the bid and that the contract in question has been awarded to someone else.

C. Prospective State Contractors who hold a valid Prequalification Certificate issued by the Commissioner of Administrative Services

In accordance with Section 4a-100, General Statutes, the Commissioner of Administrative Services may issue prequalification certificates to prospective state contractors who wish to bid on state contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality.

The prohibition on the making and soliciting of campaign contributions by the “principals” of prospective state contractors who hold valid prequalification certificates applies to both candidates for the offices listed in A (Executive branch) and B (General Assembly), as well any to any political committee authorized to make contributions to any such candidate, or party committee.

Definitions of Applicable Terms

The law includes the following definitions of terms:

State Contract—an agreement or contract with a state agency or quasi public agency, valued at \$50,000 or more in a fiscal year, or a combination of contracts or agreements with more than one agency that is valued at \$100,000 for any of the following:

1. rendition of personal services (e.g. PSAs)
2. furnishing any material, supplies or equipment
3. construction, alteration or repair of any public building or public work
4. acquisition, sale or lease of any land or building
5. a licensing arrangement
6. a grant, loan or loan guarantee

State Contractor—a person, business entity or non profit organization that enters into a contract with any state agency. A state contractor does not include a municipality, a state employee by virtue of his or her state employment, or a labor union by virtue of a collective bargaining agreement. A person, business entity or non profit organization is no longer a state contractor upon termination of the contract.

Principals of a State Contractor or Prospective State Contractor that is a Business Entity—

The following are subject to the prohibition on making and soliciting certain campaign contributions:

1. Members of the Board of Directors
2. Individuals owning 5% or more of the business
3. President, Treasurer, Executive and Senior Vice Presidents
4. Employees that have managerial or discretionary responsibilities to administer the state contract
5. Spouses and dependent children of all of the above
6. Any political committee (PAC) registered in Connecticut to make contributions to candidates that has been established by or on behalf of any of the above individuals

“Employees that have managerial or discretionary responsibilities” generally refers to higher level personnel who have oversight responsibility for the implementation of the state contract.

A Business entity includes any corporation, partnership, cooperative, joint venture, trust, or any association of any kind that is engaged in the operation of a business or profit making activity. See Section 9-333a (7), General Statutes.

Principals of a State Contractor or Prospective State Contractor that is neither a Business Entity nor a Non Profit Organization—

The following are subject to the prohibition on making and soliciting certain campaign contributions:

1. The Chief Executive Officer
2. Employees that have managerial or discretionary responsibilities to administer the state contract
3. Spouses and dependent children of all of the above
4. Any political committee (PAC) registered in Connecticut to make contributions to candidates that has been established by or on behalf of any of the above individuals

“Employees that have managerial or discretionary responsibilities” generally refers to higher level personnel who have oversight responsibility for the implementation of the state contract.

Principals of a State Contractor or Prospective State Contractor that is a Non Profit Organization—

The following are subject to the prohibition on making and soliciting certain campaign contributions:

1. The Chief Executive Officer
2. Employees that have managerial or discretionary responsibilities to administer the state contract
3. Spouses and dependent children
4. Any political committee (PAC) registered in Connecticut to make contributions to candidates that has been established by or on behalf of any of the above individuals

“Employees that have managerial or discretionary responsibilities” generally refers to higher level personnel who have oversight responsibility for the implementation of the state contract.

What does “solicit” a contribution mean for purposes of the prohibition?

The term solicit includes any of the following--

1. Requesting that a contribution be made
2. Participating in any fundraising activities for the restricted class of campaign, political and party committees, such as forwarding invitations or tickets to an event sponsored by the committee, or receiving contributions on behalf of the committee
3. Acting as Chairperson, Campaign Treasurer, Deputy Treasurer or other Officer of such a committee, or
4. Establishing a political committee (PAC) for the purpose of soliciting, making or receiving contributions for any such committee within the restricted class.

Solicit does not include informing others of any position taken by a candidate, or of any activities of, or contact information for, any such candidate. Section 9-333a (26), General Statutes.

What is a “party committee?”

A party committee includes any state central committee of a political party or local town committee of a political party; for example, the Westbrook Republican Town Committee and the Bridgeport Democratic Town Committee.

State Contractors Duty to provide list of Principals to State Agency and to submit updates

The law imposes various duties on the state agencies, state contractors and prospective state contractors in order to ensure that the prohibitions are not violated. It is an essential component of the law that all principals of state contractors and prospective state contractors be notified of the applicable prohibition, and that the names of such principals are provided to the state agency with which the contractor does business or is seeking to do business. Effective December 31, 2006, the State Elections Enforcement Commission will publish a master list of the principals of all state contractors and prospective state contractors to whom the prohibition applies. The Commission's list is based upon information obtained from each state agency that is derived from the contractor.

In the near future, you will be contacted by the state agency or quasi public agency with whom you have a contract, or have submitted a bid or proposal or by the Commissioner of Administrative Services if you hold a valid prequalification certificate. You will be asked to provide a list of the names of the principals of the business or nonprofit organization. Your anticipated cooperation is both expected and appreciated.

The law requires each agency to report any changes in the list of principals for each contractor or prospective state contractor doing or seeking to do business with the agency on a monthly basis. In some instances, the agency may have designated the State Elections Enforcement to obtain the information directly from the applicable state contractors in order to avoid duplication.

The Commission's master list of principals will be segregated by the prohibition applicable to that group of principals (Executive branch, Legislative branch or Both). The master list will be updated every three months after initial publication on December 31, 2006 and posted on the Commission's website.

As a condition of any state contract that is valued at \$50,000 or more and that is executed on or after December 31, 2006, the state contractor shall agree to comply with the applicable prohibition on making and soliciting contributions by its principals, and must inform the principals of the prohibition. In addition, the state contractor is required to report its principals to the contracting agency at the time of execution of the contract, and to submit changes on a monthly basis until the contract is terminated.

Similarly, on or after December 31, 2006, the chief executive officer of any prospective state contractor that submits a bid or proposal that is \$50,000 or more in response to an invitation by a state agency or quasi public agency, or makes application for a prequalification certificate to the Commissioner of Administrative Services, is required to:

1. inform each "principal" of the prohibition on soliciting and making campaign contributions;
2. certify in a sworn statement that any such principal will not make or solicit a contribution in violation of the prohibition; and

3. acknowledge in writing that if any such contribution is made or solicited, the prospective state contractor shall be disqualified from being awarded the contract described in the bid solicitation or request for proposal, or any other state contract for 1 year following the election to which the violation relates.

A state contractor that has been awarded a state contract before December 31, 2006 and that is valued at \$50,000 or more, must inform its principals of the applicable prohibition on their making and soliciting contributions.

Legal consequences for state contractors or prospective state contractors who violate the prohibition on solicitation or donation of contributions

There are very significant consequences that can result from any violation of the prohibition on contributions by a principal of a state contractor or prospective state contractor.

On or after December 31, 2006 if the State Elections Enforcement Commission determines that any principal of a state contractor has violated the prohibition, the Commission will notify the contracting state agency or quasi public agency of its determination, and the agency (1) may void the existing contract and (2) shall not award a new contract to the state contractor, or grant an extension or an amendment to the existing state contract for 1 year following the election for which such violation relates.

On or after December 31, 2006 if the State Elections Enforcement Commission determines that any principal of a prospective state contractor has violated the prohibition, the Commission will notify the state agency or quasi public agency of its determination, and the agency shall not award the contract or any other state contract to such prospective state contractor for 1 year following the election for which such violation relates.

Business entities are already prohibited by law from using business funds to contribute to candidates or candidate committees.

The SEEC will also publish on its website the names of any such state contractors prospective state contractors who have violated any prohibition.

In addition, the SEEC is authorized to impose civil penalties for any violations of this and other campaign finance laws, and may refer evidence of criminal violations to the Chief State's Attorney for prosecution.

Further Information on Ban on Contributions by State Contractors

For further information on this memorandum, or the prohibition on contributions by principals of state contractors and prospective state contractors, you may contact the State Elections Enforcement Commission at 860-566-1776. You may also refer to our website at <http://www.ct.gov/seec> for updates.

Thank you for your cooperation.